

P21131.A03

be practiced by another and materially different apparatus, such as laser process including, increasing/decreasing the laser power to trim the inner surface of the resulting hole by moving the position of the focal point as determined by a converging lens" (emphasis added). In other words, the Official Action asserts that the process can be practiced by another apparatus, but does not set forth an exemplary apparatus that would perform the claimed process. Rather, the Official Action merely sets forth an alternative process to achieve results similar to the claimed process, but presumably with the same apparatus claimed in claim 4. Accordingly, the Examiner has not set forth an example of an apparatus alternate to the claimed apparatus of claim 4 showing "that the process *as claimed* can be practiced by another materially different apparatus or by hand". See MPEP 806.05(e).

Moreover, the Restriction Requirement set forth by the Examiner omits one of the two criteria for a proper Restriction Requirement established by the U.S. Patent and Trademark Office policy. As set forth in MPEP §803 "an appropriate explanation" must be set forth by the Examiner as to the existence of a "serious burden" if the Restriction Requirement were not required. As the Examiner has not even addressed this criterion, it is submitted that there is no serious burden on the Examiner in examining all pending claims together.

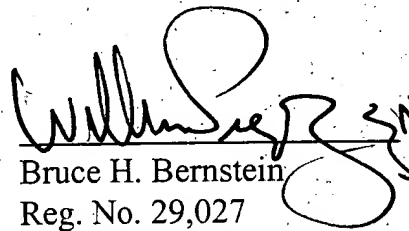
For all these reasons, and consistent with the Office Policy as set forth in MPEP §803 and 805.05, Applicants respectfully request that the Examiner reconsider and withdraw the Election Requirement in the present application. Accordingly, the Examiner's Election Requirement is believed to be improper and has been traversed for the reasons set forth above.

P21131.A03

Nevertheless, in order to be fully responsive, Applicants have elected, with traverse, the Group disclosed in Group I, comprising claims 1-3, in the event that the Examiner chooses not to reconsider and withdraw the Restriction Requirement.

Should the Examiner have any questions, please contact the undersigned at the telephone number provided below.

Respectfully submitted,
Izuru NAKAI et al.

 33630
Bruce H. Bernstein
Reg. No. 29,027

October 23, 2002
GREENBLUM & BERNSTEIN, P.L.C.
1941 Roland Clarke Place
Reston, VA 20191
(703) 716-1191